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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) DJZ-3687-114 Confirmation No. 4704
	Application Number 10/534,493	Filed June 6, 2005
First Named Inventor Bettinzoli		
Art Unit 3743	Examiner PEREIRO, J. A.	

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the _____ /David J. Zibelli/

☐ Applicant/Inventor _____ Signature

☐ Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96) _____

☒ Attorney or agent of record _____

36,394
(Reg. No.)

David J. Zibelli
Typed or printed name

703-816-4067
Requester's telephone number

☐ Attorney or agent acting under 37CFR 1.34. _____

September 15, 2010
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*

☒ *Total of 1 form/s are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AP, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**STATEMENT OF ARGUMENTS IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Claims 1-5 and 8-16 were rejected under 35 U.S.C. §103(a) over 103(a) over Dane (U.S. Pat. Pub. No. 2001/0010897) in view of Joos et al. (DE 44 27 953). In addition, claims 6 and 7 were rejected under 35 U.S.C. §103 under 35 U.S.C. § 103(a) over Dane in view of Joos et al. and further view of Armanni et al. (FR 2,650,369). The final rejection includes the errors that follow.

Error #1 Dane in view of Joos does not teach or suggest the claimed 1) at least one horizontal mixing chamber with radial Venturi effect, 2) the horizontal mixing chamber formed by top and bottom horizontal walls, 3) the bottom wall having an inflow hole at a central portion thereof; or 4) the primary air and the gas flow from the inflow hole radially and generally parallel to the top and bottom horizontal walls.

As an initial matter, it is noted that Joos is a German patent in the German language, and a translation was not provided with the Final Rejection. It appears that the Examiner is relying on more than the Abstract of Joos, and as such a translation of Joos should be supplied by the Office. MPEP 706.02 indicates “If the document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection. The record must also be clear as to whether the examiner is relying upon the abstract or the full text document to support a rejection.” As noted below, Applicant obtained a partial translation of Joos, col. 2, lines 15-21, which indicates that the Examiner has mischaracterized Joos. It is requested that a translation be provided.

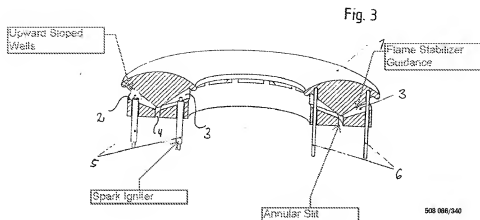
It is also noted that this application has received four office actions and a previous Pre-Appeal Brief Review, which was decided in Applicants favor such that prosecution was reopened. In the prior Pre-Appeal Brief Review Statement of Arguments, it was argued that the primary reference did not disclose or suggest at least one horizontal mixing chamber having a radial Venturi effect, which is the same issue 1) again being argued below.

Turning to the merits neither Dane nor Joos disclose or suggest any of the following features recited in independent claims 1 and 14 of the application: 1) at least one horizontal mixing chamber having a radial Venturi effect; 2) the horizontal mixing chamber formed by top and bottom horizontal walls; 3) the bottom wall having an inflow hole at a central portion thereof; or 4) the primary air and the gas flow from the inflow hole radially and generally parallel to the top and bottom horizontal walls.

The Final Rejection admits that these features are not disclosed in Dane. See pages 3-4. The Final Rejection asserts that these features are disclosed in Joos and that it would have been obvious to one of ordinary skill in the art to modify the external body of Dane wherein the means for feeding the at least one external body comprises at least one horizontal mixing chamber with a radial Venturi effect, where the horizontal mixing chamber is formed by top and bottom horizontal walls, the bottom wall having an inflow hole at a central portion thereof such that the primary air and the gas flow from the inflow hole radially and generally parallel to the top and bottom horizontal walls, since such a modification would provide a more thorough fuel/air mixture exiting said external body prior to combustion.

Joos discloses a gas burner in which the mixing chamber (or mixing tube) is not disclosed or illustrated. As indicated at col. 2, lines 15-21 of Joos, "Figures 1-3 show a burner cover 1 of a gas burner for cooking hobs of a cooker. The burner cover 1 is fixed in a detachable way on a mixing tube, not illustrated. The mixing tube cooperates with a gas nozzle, not illustrated, and supplies the burner head a combustion gas/air mixture (emphasis added)." The burner head depicted in Joos doesn't illustrate any mixing chamber (or mixing tube) for mixing the primary air to the combustion gas, but instead merely indicates that the burner cover 1 is connected to a mixing tube. There is no disclosure of the structure of the not illustrated mixing tube. Joos does not disclose or suggest a horizontal mixing chamber having a radial Venturi effect as recited in claims 1 and 14 of the application.

Thus, with reference to Fig. 3 of Joos reproduced below, the mixing chamber (or mixing tube) of Joos is not illustrated or described. Element 3 of Joos is incorrectly asserted by the Office Action to be a horizontal mixing chamber for mixing primary air with combustible gas – since such a mixture of air and gas is supplied to the annular chamber 3, via the annular gap 4, by the not illustrated mixing tube placed upstream therefrom. As further indicated in claim 1 of Joos, annular chamber 3 is a flame stabilizer stream guidance ("eine Flamme stabilisierende Strömungsführung (3)"), i.e. a chamber in which an annular flame establishes and stabilizes, not a mixing chamber. Please also consider that members 5 within chamber 3 in Fig. 3 of JOOS are spark igniters.



Joos does not disclose or suggest a horizontal mixing chamber formed by top and bottom horizontal walls, as recited in claims 1 and 14 of the application. Even if the annular chamber 3 of Joos was a horizontal mixing chamber, which it is not, the top and bottom walls of annular chamber 3 are not “top and bottom horizontal walls.” As can be seen in Fig. 3 of Joos, the walls are not horizontal walls, but are instead upwardly sloped walls.

Joos does not disclose or suggest the bottom wall having an inflow hole at a central portion thereof as recited in claims 1 and 14 of the application. Even if the annular chamber 3 of Joos was a horizontal mixing chamber, which it is not, the element 4 of Joos is not an inflow hole at a central portion thereof, but is instead an annular slit 4 opening along the entire perimeter of the burner head.

Joos does not disclose or suggest the primary air and the gas flow from the inflow hole radially and generally parallel to the top and bottom horizontal walls, as recited in claims 1 and 14 of the application. Even if the top and bottom walls of annular chamber 3 were horizontal walls, which they are not since they slope upward, the primary air/gas mixture emerging from annular slit 4 cannot flow radially and generally parallel to top and bottom horizontal walls, since the walls of Joos are mutually divergent. In the annular chamber 3 of Joos, the air gas mixture cannot expand radially when emerging from the slit 4, but instead must expand axially between the upwardly sloped, mutually divergent walls, without any Venturi effect.

The Office Action refers to element 1 as the top wall and the bottom of the elements below the annular chamber 3 as the bottom wall of the horizontal mixing chamber. Element 1 is a burner cover 1 and is not a top wall of the annular chamber 3. Even if the burner cover 1 was a top wall of the annular chamber 3, which it is not, it is not a horizontal top wall, but is instead a curved wall which is not horizontal. Further, the primary air and the gas do not

flow generally parallel to the top wall of the burner cover 1 (asserted to be the top horizontal wall), but instead must flow upwardly due to the slant of the walls in the annular chamber. Moreover, the bottom wall of the elements below the annular chamber 3 is not a bottom wall of the annular chamber 3. Even if the bottom wall of the elements below the annular chamber 3 was a bottom wall of the annular chamber 3, which it is not, the primary air and the gas do not flow generally parallel to the bottom wall of the elements below the annular chamber 3 (asserted to be the bottom horizontal wall), but instead must flow upwardly due to the slant of the walls in the annular chamber.

For at least the above reasons, even if combined as suggested, Dane and Joos would not render obvious independent claims 1 or 14, or any claims dependent therefrom. Withdrawal of the rejection is requested.

Error #2 Dane in view of Joos and Armanni does render obvious claims 6 or 7.

Because claims 6 and 7 depend from claim 1, which is not obvious over Dane in view of Joos, and because Armanni et al. does not solve the above noted deficiencies of Dane and Joss, claims 6 and 7 would not have been obvious over Dane in view of Joos and Armanni et al. Withdrawal of the rejection is requested.

As a result of the above, there is simply no support for the rejection of Applicant's claims. Applicant respectfully requests that the Pre-Appeal Panel find that the application is allowed on the existing claims.